

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1156 / 13-0436  
Filed January 23, 2014

**IN RE THE MARRIAGE OF REDA G. BONNICHSEN  
AND CARL G. BONNICHSEN**

**Upon the Petition of  
REDA C. BONNICHSEN,**  
Petitioner-Appellee,

**And Concerning  
CARL G. BONNICHSEN,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Muscatine County, Thomas G.  
Reidel, Judge.

Carl Bonnichsen appeals the spousal support and property distribution  
provisions of the decree dissolving his marriage to Reda Bonnichsen.

**AFFIRMED.**

Keith J. Larson and Nicholas J. Kilburg of Elderkin & Pirnie, P.L.C., Cedar  
Rapids, for appellant.

John E. Wunder, Muscatine, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

**DOYLE, P.J.**

Carl Bonnichsen appeals the spousal support and property distribution provisions of the decree dissolving his marriage to Reda Bonnichsen. Carl contends the district court's award of spousal support to Reda and valuation and distribution of marital property are inequitable under the facts and circumstances of this case. We affirm.

***I. Background Facts and Proceedings***

Carl and Reda married in 2000 and divorced in 2013. No children were born during the marriage. It was Carl's second marriage and Reda's third marriage. Both had adult children from previous marriages.

Carl was fifty-two years old at the time of trial. He began working at Monsanto several months after graduating high school, and continues to maintain that employment. Carl works a swing shift on a five-week rotation that includes some 12-hour days and occasional work on the weekends. Carl's average income was \$83,817.21 per year during the four-year period prior to trial. His low year for this period was 2012 when he earned \$77,740.03. Carl has high blood pressure and sleep apnea and takes an anti-depressant, none of which prevent him from being able to work.

Reda was fifty-five years old at the time of trial. She has a GED and has worked for Lutheran Homes for a total of twenty-seven years in various capacities, including a nurse's aide and a van driver.<sup>1</sup> Reda currently works at Lutheran Homes as a receptionist with extended responsibilities. She earns

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<sup>1</sup> Reda obtained a commercial driver's license in 1986. At one point, Reda used her commercial driver's license to obtain employment as a school bus driver. And from 1998 to 2005, Reda worked as a convenience store clerk.

\$11.40 per hour—a little over \$23,000 per year based on a forty-hour week. Reda is physically fit and healthy, although her right knee will need to be replaced at some point in the future.

The parties both brought assets into the marriage, including their homes and retirement accounts. After they married, they sold their premarital homes, purchased a lot, and hired Reda's son-in-law to build them a new home. Reda assisted with the construction by staining and clear coating wood, cleaning and clear coating the basement floor, painting walls, and landscaping the property. Carl helped with the construction as well, but not to the same extent as Reda.

During the marriage, the parties enjoyed a good standard of living. Their home mortgage was their only debt. They travelled regularly.

In February 2013, the district court entered a decree dissolving the parties' marriage. The court considered the conflicting valuations provided by the parties' experts and valued the marital home at \$257,000. The court determined the proper valuation date for the parties' assets was the date of trial. The court ordered the marital portion of the parties' retirement accounts to be divided equally. The court also awarded Reda the option of accepting one-half of the marital portion of Carl's pension, or receipt of 18.05 percent of Carl's monthly cash payment upon his retirement. In regard to the parties' remaining assets (marital home, vehicles, personal property, bank accounts, etc.), the court ordered Carl to make an equalization payment to Reda in the amount of \$107,473 within forty-five days of the date of the decree. The court ordered Carl to pay spousal support to Reda in the amount of \$500 per month for seven years. Finally, the court ordered Carl to pay \$3000 of Reda's attorney fees.

Carl appeals.<sup>2</sup>

## **II. Standard of Review**

We review this equity action involving the dissolution of a marriage de novo. Iowa R. App. P. 6.907; *In re Marriage of McDermott*, 827 N.W.2d 671, 676 (Iowa 2013). Accordingly, we examine the entire record and decide anew the legal and factual issues properly presented and preserved for our review. *McDermott*, 827 N.W.2d at 676. We give weight to the findings of the district court, particularly concerning the credibility of witnesses; however, those findings are not binding upon us. *Id.*; see also Iowa R. App. P. 6.904(3)(g). Only when there has been a failure to do equity will we disturb the district court's ruling. *McDermott*, 827 N.W.2d at 676.

## **III. Spousal Support**

Carl challenges the district court's award of spousal support to Reda, claiming such award is inequitable under the circumstances of this case.

Spousal support is not an absolute right—it depends upon the circumstances of a particular case. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 486 (Iowa 2012). Although Carl cites several cases to support his contention that he should not be required to pay spousal support, “prior cases are of little value in determining the appropriate alimony award.” *In re Marriage of Becker*, 756 N.W.2d 822, 825 (Iowa 2008). The amount of spousal support is always calculated equitably based upon all the factors contained in Iowa Code section 598.21A(1) (2011).

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<sup>2</sup> Reda filed a cross-appeal, which she later voluntarily dismissed.

The district court aptly noted the factors under section 598.21A “of particular importance in this case include the length of the marriage, the distribution of property, the earning capacity of the parties, and the feasibility of the party seeking maintenance becoming self-supporting at a standard of living comparable to that enjoyed in the marriage.” The court determined “Reda has the need for alimony, and Carl has the ability to pay.” Specifically, the court found it equitable for Carl to support to Reda of \$500 for seven years, at which time Reda would be sixty-two years old and “at an age when she can begin receiving social security retirement benefits, though full benefits will become available four years later.” The court further explained,

Reda’s current expenses will lessen when she purchases a home and no longer has to pay rent, but this will be offset by the cost of home maintenance and the cost of her health insurance. The award of spousal support will allow her to live in a manner that is not as “tight” and allows her to enjoy a standard of living closer to what she enjoyed during the marriage. Carl has shown that he is able to pay the \$500 per month without any hardship.

On appeal, Carl takes issue with the court’s decision, claiming his marriage to Reda “was not a long marriage,” Reda did not make “economic sacrifices during the marriage contributing to [his] earning capacity,” Reda worked through the marriage, and Reda is “more physically and mentally capable of future work than [he is].” Carl relies heavily on Reda’s testimony that she was able to cover her expenses without the \$500 per month in temporary support she was receiving from him. As the district court noted, Carl’s argument is essentially, “Reda is surviving so she does not need any further contribution from him.”

We, like the district court, find Carl's contention misplaced. Indeed, Reda testified she "barely make[s] it" without the \$500 temporary support. However, at that time, Reda's monthly expenses included only \$112 for health insurance (which she was not yet paying but would be required to upon the dissolution of the parties' marriage) and no additional funds for medical expenses to meet her plan's high deductible. In addition, Reda listed only \$500 for housing expenses, and did not list any contributions to her 403(b) account.

The district court gave weight to Reda's testimony that she is "not a spender" who "always stay[s] within [her] means," but that she is not enjoying near the standard of living she had for the past twelve years. Reda agreed she "would have trouble" meeting her expenses if Carl was not required to pay spousal support. This is in stark contrast to Carl's testimony that his standard of living had not changed since the parties' separation. Indeed, Carl testified he was making accelerated payments on the marital home mortgage "to get it paid off quicker." Carl was also contributing a significant portion of his income to his 401(k) account.

A district court has considerable latitude when making an award of spousal support. *Schenkelberg*, 824 N.W.2d at 486. We will disturb the court's ruling only when there has been a failure to do equity. *Id.* Such deference is decidedly in the public interest. *In re Marriage of Benson*, 545 N.W.2d 252, 257 (Iowa 1996). "When appellate courts unduly refine these important, but often conjectural, judgment calls, they thereby foster appeals in hosts of cases, at staggering expense to the parties wholly disproportionate to any benefit they might hope to realize." *Id.* The district court's award of spousal support is

appropriate and equitable considering the facts and circumstances of this case. We affirm on this issue.

Carl also challenges the provision in the decree requiring him to “maintain \$50,000 of life insurance with Reda as the beneficiary until such time as his alimony obligation is satisfied.” Carl claims his spousal support obligation should terminate upon his death.<sup>3</sup> Here, however, the district court did not order Carl to make spousal support payments after his death. Rather, the court ordered Carl to list Reda as beneficiary on a \$50,000 life insurance policy so long as his support obligation continues under the decree.<sup>4</sup> See, e.g., *In re Marriage of Debler*, 459 N.W.2d 267, 270 (Iowa 1990) (ordering husband to list wife as beneficiary on life insurance policy and “continue to do so as long as he has an obligation to pay alimony under the decree”). This provision is equitable and we do not disturb it on appeal.

#### **IV. Valuation of Marital Home**

Carl claims the district court erred in valuing the marital home. He states Louisa County assessed the home “as being worth \$212,000” and despite the “inadequacies” of Reda’s expert’s report, the court “valued the home residence at \$275,000.”<sup>5</sup> Carl further contends the court also “failed to consider” his testimony

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<sup>3</sup> Although not relevant here, we acknowledge Iowa Code section 598.21A is broad enough to permit spousal support payments after death. Iowa Code § 598.21A(1) (providing “the court may grant an order requiring support payments to either party for a limited or indefinite length of time”); see *In re Marriage of Debler*, 459 N.W.2d 267, 270 (Iowa 1990); *In re Marriage of Weinberger*, 507 N.W.2d 733, 736 (Iowa Ct. App. 1993).

<sup>4</sup> At trial, the court heard testimony regarding Carl’s \$400,000 term life insurance policy through his employer, of which Reda was formerly the named beneficiary. During the course of these proceedings, Carl removed Reda as the beneficiary of this policy.

<sup>5</sup> Carl further relies on Reda’s financial affidavit in which she noted the home was worth \$250,000. However, as Reda testified at trial, she completed her affidavit prior to her receipt of the report of her expert as to the home’s value.

“he still owes \$51,000 on the home.” Carl asks this court to value the home at \$179,000.<sup>6</sup>

Contrary to Carl’s statements, the district court considered the conflicting valuations provided by the parties’ experts and valued the marital home at \$257,000—an amount squarely between those reached by the experts. Specifically, Reda’s expert valued the home at \$275,000; Carl’s expert valued the home at \$239,000. The district court “decline[d] to accept either valuation,” finding “both experts have valid points in their respective criticism of the valuation performed by the other party.” The court further explained its valuation of \$257,000 “takes [Reda’s expert’s] appraisal but provides a 6.5 reduction in the price based on the margin of error [acknowledged by Reda’s expert] and the factors set forth by [Carl’s expert].” Also in contrast to Carl’s contention, the district court provided a set-off to Carl for “Debt” in the amount of \$51,311 to account for the mortgage balance on the home at the time of trial.

“Ordinarily, a trial court’s valuation will not be disturbed when it is within the range of permissible evidence. . . . Although our review is de novo, we ordinarily defer to the trial court when valuations are accompanied by supporting credibility findings or corroborating evidence.” *In re Marriage of Hansen*, 733 N.W.2d 683, 703 (Iowa 2007) (internal citations omitted). Here, we find the district court’s valuation of the marital residence was within the range of the

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<sup>6</sup> According to Carl, this amount represents the home’s fair market value of \$239,000, as established by his expert, less the \$60,000 mortgage he owed as of the date of separation of the parties. Although Carl does not specifically challenge the court’s utilization of the mortgage balance as of the trial date, we discuss the date of valuation issue below concerning Carl’s retirement assets, and our same reasoning would apply to the date of the home equity valuation.



evidence and, as a result, should not be disturbed. *See id.*; *see also McDermott*, 827 N.W.2d at 679 (same).

## **V. Division of Retirement Assets**

Carl challenges the district court's division of retirement assets (1) "by overestimating the amount to be awarded to Reda" and (2) "by inequitably giving Reda credit for the increase in Carl's assets during the separation."

In regard to the second part of his claim, we conclude the district court properly valued the parties' marital assets as of the time of trial. *See In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989) ("It is the net worth of the parties at the time of trial which is relevant in adjusting their property rights."); *In re Marriage of Hagerla & Frazee-Hagerla*, 698 N.W.2d 329, 333 (Iowa Ct. App. 2005) (stating the parties' "assets should then be given their value as of the date of trial"). Here, the parties were separated less than one year before trial, and Carl cites no reason—other than the fact his retirement accounts increased in value during the separation—that they should not be valued at the time of trial.<sup>7</sup> We affirm on this issue.

Turning to the first part of Carl's contention, Carl claims Reda should not receive half of his retirement assets (namely, his Monsanto Savings and Investment Plan "SIP" valued at \$466,483.79, and his Monsanto pension account valued at \$216,259.42) accumulated during the marriage.<sup>8</sup> According to Carl,

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<sup>7</sup> Carl voluntarily continued to contribute a large portion of his income to his 401(k) after parties separated because, as he explained, "it's helping my retirement."

<sup>8</sup> Carl states the "pre-marriage value" of his SIP and pension "were the result of [his] work long prior to the marriage." To be clear, Reda has never requested any portion of Carl's premarital retirement accounts, and per the parties' agreement, the court set-off the pre-marital balance of these respective accounts to Carl prior to determining their value for property distribution purposes.

“Reda did not make any contributions to [his] pension or SIP before, during, or after the marriage.” He reasons, therefore, that Reda should not receive any of these assets.

At trial, Carl agreed Reda would not leave the marriage with much if the court went his way, but reasoned, “She didn’t have much coming into [the marriage].” Carl further explained, “She shouldn’t leave with much because she’s never contributed to my 401(k) or pension. She was never accustomed to that money.” Carl agreed, however, that during their twelve-year marriage, Reda “contributed to [his] life,” “was [his] companion,” and “took care of [him] and [his] home.”<sup>9</sup>

The district court described Carl’s position “archaic, inaccurate, and inequitable.” We agree. Pension and retirement accounts are treated as marital property and are subject to division. See *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). We conclude the district court’s distribution of Carl’s retirement and pension accounts was equitable under the facts and circumstances of this case. We affirm on this issue.

## **VI. Trial Attorney Fees**

Carl challenges the district court’s award of trial attorney fees to Reda. He claims Reda was awarded—via the property distribution—sufficient assets from

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<sup>9</sup> Although Reda worked part-time during the first four years of her marriage to Carl, she had worked full-time since 2005. According to Reda, Carl preferred her to work less because he “liked having [her] home.” Carl and Reda both attested to taking care of the house responsibilities in addition to working, but Carl agreed Reda cooked, cleaned, did laundry, mowed the lawn, shopped for groceries, and did landscaping on the yard. The district court also pointed out the “sweat equity” Reda provided to the marital home during its construction.

which to pay her own attorney fees. He requests this court eliminate the award of attorney fees to Reda.

An award of trial attorney fees rests in the sound discretion of the trial court and should not be disturbed on appeal in the absence of an abuse of discretion. *In re Marriage of Romanelli*, 570 N.W.2d 761, 765 (Iowa 1997). Whether attorney fees should be awarded depends on the parties' respective abilities to pay, see *Sullins*, 715 N.W.2d at 255, and fees awarded must be fair and reasonable, see *In re Marriage of Guyer*, 522 N.W.2d 818, 822 (Iowa 1994).

Here, we find no abuse of discretion on the part of the district court in ordering Carl to pay \$3000 toward Reda's attorney fees. We affirm on this issue.

**VII. Appellate Attorney Fees**

Reda seeks an award of \$3000 for appellate attorney fees. Such an award is discretionary. *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). Because Reda was required to defend Carl's unsuccessful appeal and because her income and ability to pay attorney fees is significantly lower than Carl's, we order Carl to pay \$2500 toward Reda's appellate attorney fees.

Costs of appeal are assessed to Carl.

**AFFIRMED.**